

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of	:	
	:	
OFFICE AND PROFESSIONAL	:	
EMPLOYEES INTERNATIONAL UNION,	:	
LOCAL NO. 9, AFL-CIO-CLC	:	Case 12
	:	No. 34151 ME-2403
Involving Certain Employes of	:	Decision No. 22667-B
	:	
OZAUKEE COUNTY	:	
	:	

Appearances:

Mr. Joseph Robison, Business Manager, OPEIU Local 9, AFL-CIO-CLC, 6333 West Bluemound Road, Milwaukee, Wisconsin 53213, appearing on behalf of the Petitioner.

Mr. Robert W. Lyons, Executive Director, Wisconsin Council 40, AFSCME, AFL-CIO, 5 Odana Court, Madison, Wisconsin 53719, and Ms. Helen Isferding, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 2323 North 29th Street, Sheboygan, Wisconsin 53081, appearing on behalf of the Intervenor.

Lindner & Marsack, S.C., Attorneys at Law, by Mr. Jonathan T. Swain, 700 North Water Street, Milwaukee, Wisconsin 53202, appearing on behalf of the County.

DIRECTION OF RUNOFF ELECTION

Pursuant to a Direction of Election previously issued by it, the Wisconsin Employment Relations Commission conducted elections among certain employes of the above-named Municipal Employer on July 2, 1985. 1/ On July 11, 1985, the Commission issued a Certification of Results of Election which reflected that a majority of the eligible employes in Voting Group No. 2 (professional employes) voted to be included in an overall bargaining unit with employes in Voting Group No. 1 (non-professional employes) and that none of the choices on the representation ballot (Office and Professional Employees International Union, Local No. 9, AFL-CIO-CLC or Wisconsin Council 40, AFSCME, AFL-CIO or no representation) received a majority of votes cast. Prior to the issuance of the above-noted Certification, both OPEIU and AFSCME filed written requests for a runoff election with OPEIU asking that the candidate receiving the least number of votes (AFSCME) in the July 2 election be deleted from the runoff ballot and AFSCME asking that the choice of no representation be deleted from said runoff ballot. All parties subsequently filed position statements with respect to the runoff requests, the last of which was received on July 17, 1985. The Commission has considered the matter and concluded, pursuant to Sec. 111.70(4)(d)4, Stats., that a runoff election is appropriate and that the representation ballot should consist of a choice between OPEIU and no representation;

1/ The election was conducted on June 14, 1985. However, in the election conducted among the professional employes to determine the unit question, there were two challenged ballots which were determinative to the outcome of the election. The representation ballots cast by employes in both Voting Group No. 1 and Voting Group No. 2 were impounded until such time that the challenges to the two ballots were resolved. Prior to any formal action by the Commission, the parties agreed that the two employes whose ballots were challenged were not eligible to vote, and therefore, the representation ballots could be counted. Said ballots were opened and counted on July 2, 1985.

NOW, THEREFORE, it is

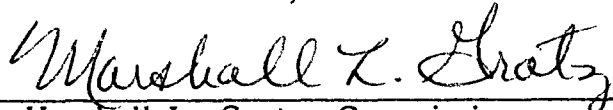
ORDERED

That a runoff election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission, within 45 days of the date of this direction, in the collective bargaining unit consisting of all full-time and regular part-time employees of Ozaukee County including professional employees, excluding elected officials, supervisors, administrative, managerial, casual, and confidential employees including but not limited to Register in Probate, Bailiffs, Jury Commissioners, Emergency Government employees, employees of other certified or recognized bargaining units and employees of Lasata Nursing Home, who were employed on May 16, 1985, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether such employees desire to be represented by Office and Professional Employees International Union, Local No. 9, AFL-CIO-CLC or by no labor organization for the purposes of collective bargaining with Ozaukee County on questions of wages, hours and conditions of employment.

Given under our hands and seal at the City of
Madison, Wisconsin this 22nd day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By  _____
Herman Torosian, Chairman

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Marshall L. Gratz, Commissioner

 _____
Danae Davis Gordon, Commissioner

MEMORANDUM ACCOMPANYING
DIRECTION OF RUNOFF ELECTION

Background:

When a representation election such as that herein is conducted by the Commission and the results are inconclusive, Sec. 111.70(4)(d)4, Stats., provides that the Commission may, upon the request of any party, conduct a runoff election in which the Commission ". . . may drop from the ballot the name of the candidate or choice receiving the least number of votes."

In the instant proceeding the Commission has received runoff election requests from both OPEIU and AFSCME. OPEIU asks that the runoff ballot consist of a choice between OPEIU and no representation, with AFSCME, as the candidate or choice receiving the least number of votes in the original election, being dropped from the ballot. OPEIU asserts that the removal of AFSCME from the ballot conforms with Commission past practice and the clear meaning of Sec. 111.70(4)(d)4, Stats. AFSCME seeks a ballot which would give voters a choice between AFSCME and OPEIU with no representation being the choice dropped from the ballot because the number of employees voting for union representation exceeded the number who voted for no representation. AFSCME notes that the statutory use of the word "may" demonstrates that the Commission has ample discretion to determine the appropriate ballot choices in a runoff election. AFSCME also asserts that because employees are now aware of an AFSCME election victory in another unit of Ozaukee County employees which occurred on the same day the initial election was conducted herein, retention of AFSCME on the ballot is all the more appropriate.

Ozaukee County and OPEIU oppose AFSCME's request as being contrary to Sec. 111.70(4)(d)4, Stats., as well as Commission practice.

Discussion:

The dispute before us focuses on how the term "candidate or choice" should be defined in Sec. 111.70(4)(d)4, Stats. OPEIU and the County assert that the term in question refers to the specific candidates (OPEIU and AFSCME) and choice (no representation) listed on the first election ballot. AFSCME asks that we view the first ballot as presenting the voters with two choices (union representation or no union representation) with no representation being dropped from the runoff ballot because it received fewer votes than did the union representation choice. We do not find AFSCME's proposed interpretation to be persuasive.

It has consistently been our practice to interpret the phrase "candidate or choice" as referring to the specific named options given the voters on the ballot itself. This practice is premised upon the statutory language itself which refers to dropping the ". . . name of the candidate or choice" (emphasis added) receiving the fewest votes. In our view, AFSCME's proposed interpretation is not only contrary to this statutory emphasis on the specific options named on the ballot but would also render the statutory reference to "candidate" a nullity. Thus, we are persuaded that to give all portions of the statute meaning and to honor the specific statutory reference to the names of the options listed on the ballot, "candidates" should be interpreted as referring to the labor organizations which seek to represent the employees and "choice" should be interpreted as a reference to the statutorily mandated option of voting for no representation. As the ballot option receiving the fewest number of votes was "candidate" AFSCME, it is AFSCME which will be deleted from the runoff election we have directed herein.

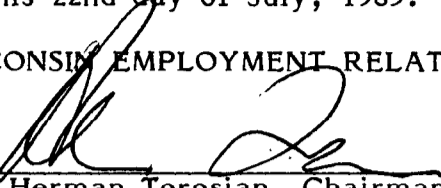
While Sec. 111.70(4)(d)4, Stats., uses the permissive "may" concerning the removal of the choice receiving the fewest number of votes, nothing before us in this case would warrant us running another election without deleting any of the

three choices. Hence, we reject AFSCME's contention that it should receive a second opportunity to appear on the ballot due to an intervening election victory in another unit.

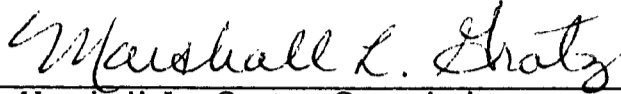
Dated at Madison, Wisconsin this 22nd day of July, 1985.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

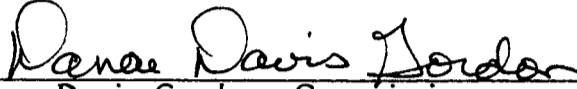
By



Herman Torosian, Chairman



Marshall L. Gratz, Commissioner



Danae Davis Gordon, Commissioner